

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Multi-Association Group (MAG) Plan for)	CC Docket No. 00-256
Regulation of Interstate Services of)	
Non-Price Cap Incumbent Local Exchange)	
Carriers and Interexchange Carriers)	

Reply Comments of TCA, Inc. – Telcom Consulting Associates

Introduction

Telcom Consulting Associates (TCA) submits these Reply Comments in response to the Commission’s May 23, 2001 Further Notice of Proposed Rulemaking ¹ seeking comment regarding the Rural Task Force’s (RTF) proposal to freeze per-line support in rural carrier study areas in which a competitive eligible telecommunications carrier (CETC) is providing service.

I. The Commission is statutorily mandated to base universal service policies on principles set out in the Telecommunications Act of 1996.

The Telecommunications Act of 1996 (the Act) clearly states that the Commission “*shall base policies* for the preservation and advancement of universal service on the following principles...”² One of the listed principles is that universal service support (including High Cost Fund (HCF) support) be “specific, predictable and sufficient...”³ The Commission, within the Order and FNPRM, notes its legislative responsibility and

¹ *In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45 and 00-256, FCC No. 01-157, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, Adopted May 10, 2001, Released May 23, 2001 (Order and FNPRM).

² 47 U.S.C. §254(b) (emphasis added).

³ 47 U.S.C. §254(b)(5).

highlights that the RTF plan adopted “will preserve and advance universal service...”⁴ As the Commission noted in the Order and FNPRM⁵, the Fifth Circuit, in two decisions,⁶ has observed that the Act “is ambiguous as to what constitutes ‘sufficient’ support.”⁷ Again, within the Order and FNPRM, the Commission notes that it must “use its expertise and informed judgment...”⁸ in determining the level of sufficient support. Further, after finding that the Commission had not defined the term “sufficient” in a related proceeding in this docket, the Tenth Circuit recently ordered the FCC to do so “in a way that can be reasonably related to the statutory principles...”⁹

Any policy choice regarding universal service made in this proceeding must be decided after the Commission has issued a specific definition of “sufficient.” To decide against the current backdrop of uncertainty would be in violation of the statutory mandate of the Act.

II. The Initial Comments do not demonstrate that the principle of sufficiency is threatened.

The Commission, stating that it is “not convinced of the likelihood of excessive fund growth”¹⁰ during the five-year period the RTF Order will be implemented, requested that commentators “address the likelihood that such measures may be necessary to prevent *excessive* fund growth during the five-year period.”¹¹ None of the initial comments offered any facts or even studied speculation that the HCF will grow excessively during the upcoming five years, thereby threatening the sufficiency principle of universal service and making necessary any measure to prevent such growth. Both commentators who either supported the original RTF proposal¹² or offered an alternative mechanism¹³ would

⁴ Order and FNPRM, ¶24.

⁵ Order and FNPRM, ¶27.

⁶ *Ibid*, Note 67.

⁷ Order and FNPRM, ¶27.

⁸ *Ibid*.

⁹ *Qwest Corporation v. FCC*, No. 99-9546, Filed July 31, 2001, p.10. See <http://pacer.ca10.uscourts.gov/opinions/main.php>.

¹⁰ Order and FNPRM, ¶ 211.

¹¹ Order and FNPRM, ¶ 209, emphasis added.

¹² *AT&T Comments on RTF FNPRM*, (AT&T Initial Comments) CC Docket Nos. 96-45 and 00-256, July 30, 2001, pp. 4-5.

have the Commission base this policy choice upon pure speculation, as neither party presented specific or direct evidence that the HCF “would increase precipitously”¹⁴ upon competitive entry into a rural study area. AT&T, requesting the Commission adopt the very proposal rejected by the Order and FNPRM, offers only an explanation of the RTF proposal, using a surmised example of what *could* happen. Texas OPUC also, in offering an alternative mechanism to the RTF proposal, offers no proof of excessive growth. Texas OPUC actually concedes the speculative basis of the RTF’s and its own proposal by stating that, “[h]owever unlikely, the Commission needs to prepare for CETC entry and establish an appropriate mechanism that will address the *possibility* of excessive growth in the High Cost Loop Fund.”¹⁵

Texas OPUC would have the Commission retrace its steps and reject the use of the modified embedded cost mechanism it adopted in the Order and FNPRM,¹⁶ citing the mechanism as the cause of concern for excessive growth.¹⁷ Texas OPUC summarizes by stating:

[T]he method in which High Cost Loop Support is calculated using the incumbent carrier’s embedded costs, and the determination that incumbent carrier’s support is portable to CETCs, *could* create a vicious circle that would produce excessive growth in the High Cost Loop Fund.¹⁸

TCA notes that the causes for concern as stated by the Texas OPUC – the embedded cost mechanism and the portability of federal universal service support – have been in place during the past four years.¹⁹ Texas OPUC offers no proof that the combination of these two factors has caused *any* significant past increase

¹³ *Comments of the Texas Office of Public Utility Counsel*, (Texas OPUC Initial Comments) CC Docket Nos. 96-45 and 00-256, July 5, 2001, pp. 1-2.

¹⁴ AT&T Initial Comments, p. 2.

¹⁵ Texas OPUC Initial Comments, p. 8 (emphasis added).

¹⁶ Order and FNPRM, ¶24.

¹⁷ Texas OPUC Initial Comments, p. 4.

¹⁸ *Ibid*, p. 6.

¹⁹ The embedded cost mechanism has been in use (in various forms) for approximately sixteen years. Federal universal service support has been portable to CETCs since 1997 (*In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, *Report and Order*, Adopted May 7, 1997 (rel. May 8, 1997), ¶ 311).

in the HCF, much less excessive growth. The Commission is requested to render governmental policy on future speculation that is debunked by simply examining past experience.

TCA, utilizing data from the Universal Service Administrative Company (USAC) and the Commission, demonstrated in its initial comments how in the previous five years (1996-2001), the total universal service fund has *not* grown excessively or precipitously, even with the combination of factors cited by Texas OPUC. As USAC's own information proves, CETCs are currently "expected to require less than one-half of one percent (0.5%) of the entire fund to provide universal service."²⁰ If the Commission were to freeze support while lacking any evidence of actual harm, this decision would most certainly upset the "fair and reasonable balance among the goals and principles of the Act..."²¹ sought in this proceeding.

III. The Commission should reject any proposal that attempts to resolve a non-existent harm or could cause harm.

Texas OPUC offers an alternative proposal to the original RTF proposal. Texas OPUC would have HCF support frozen "when CETC entry has occurred and an incumbent rural carrier has lost a specified percentage of its access lines"²² *for any reason*. Texas OPUC, in justifying its proposal, states "incumbent rural carrier line loss is the *direct* cause of growth in the High Cost Loop Fund."²³ TCA concedes that the loss of access lines, those lost by rural *and* non-rural carriers, would increase the HCF. However, once more, nothing has been offered to illustrate that any increase in federal support violates either the principle of sufficiency or the Congressional goal of universal service. Texas OPUC would utilize federal universal service policy to punish rural Americans and carriers for factors beyond control, such as population decline.²⁴ Some of the factors that Texas OPUC would have freeze federal support are the same contributors to the higher loop

²⁰ *Comments of TCA – Telcom Consulting Associates*, CC Docket Nos. 96-45 and 00-256, July 30, 2001, p. 5.

²¹ Order and FNPRM, ¶ 27.

²² Texas OPUC Initial Comments, p. 9.

²³ *Ibid.*, p. 11 (emphasis in original).

²⁴ *Ibid.*, p. 10, Note 16.

costs of rural carriers. Higher loop costs, coupled with the desire that all Americans, regardless of geographical location, have access to a communications network at comparable rates persuaded Congress to first implement universal service policies. To adopt the proposal advanced by the Texas OPUC would most certainly violate the principle of sufficiency and the Congressional mandate of universal service clearly stated within the Act.²⁵ The Commission should soundly reject this proposal for the same reasons as it rejected the original RTF proposal.

As previously stated, AT&T proposes in this FNPRM that the Commission adopt the original RTF proposal. AT&T offers no justification as to why the Commission should abandon the position it took rejecting this proposal in the Order and FNPRM. AT&T states no benefit, other than alleviating a *surmised* harm, to adopting the original proposal. The Commission should continue to reject the original RTF proposal for the many and valid reasons stated within the Order and FNPRM.

The Commission should continue on the path it laid out within the Order and FNPRM²⁶ and "...monitor the impact of competitive entry in rural carrier study areas..."²⁷ To step any further at this point and impose a remedial remedy for a non-existent harm would most certainly violate the mandated goal of universal service.

Respectfully submitted,
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By: [electronically filed]

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²⁵ 47 U.S.C. 254(b)(3).

²⁶ Order and FNPRM, ¶¶ 131 and 133.

²⁷ *Ibid.*, ¶131.